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OCT 31 1956
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 430

SAM ACHILLI,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR CERTIORARI.

FRANK J. GAGEN, JR.,
29 South La Salle Street,
Chicago 3, Illinois,

ANNA R. LAVIN,
1 North La Salle Street,
Chicago 2, Illinois,
Attorneys for Petitioner.

The Scheffer Press, Inc.—ANdover 3-6850

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OPINIONS BELOW.

The District Court wrote no opinion. The opinion of the Court of Appeals for the Seventh Circuit (Pet. A-1 to A-10) affirming the judgment of the District Court has been reported as 234 F. 2d 797.

REPLY TO BRIEF IN OPPOSITION.

While your petitioner, necessarily, cannot agree with the conclusions espoused by the Government's Brief in Opposition to the Petition under points numbered 1 through 5, he does agree that the Government has demonstrated an effort to recognize the essence of the arguments made on such points and to fairly meet them. For that reason he will not address repetitious argument thereto. However, as to its argument on point 6 (Br. Opp. p. 13), it is respectfully submitted by your petitioner that the Government has contented itself with merely impressing upon the instant cause Facts and Law adopted from a former cause decided by this Court, (*Berra* v. *United States*, 351 U. S. 131) and with which we are not directly concerned. The employment of the seemingly expeditious package disposal of three Petitions for Certiorari (this, together with *Doyle* v. *United States* and *Moran* v. *United States*, Nos. 386 and 417, this Term) does violence to the factual circumstances of this cause and the legal propositions advanced.[1] Your petitioner is apprehensive that the Government's summary dismissal by its discussion in its point 6 may obscure the overriding error assigned.

1. The petitioner has requested this Court to accept this case for review, in part, because "We submit that the record on appeal was sufficient to place the issue before the Court (of Appeals) below; and it was error to decline to pass upon the merits of the issue." (Pet. 30).

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[1] The Government's footnote 6 (Br. Opp. p. 14) is an incomplete and, therefore, inaccurate statement of the record of the petitioner's motion to dismiss. While not designated by specific code number, that motion was addressed to the conflict of code provisions with the Statute cited in the instant Indictment. (R. 7).

The Government, beginning at page 13 of its Brief in Opposition, states "Finally, the petitioner raises questions as to the legality of his sentence and the validity of the indictment * * *" and concludes "* * * *a fortiori*, the question is not presented by the record in the instant case, on which it was not raised in the District Court in any manner. (Pet. A-17-A-20)". The Government has ignored Point 8 of the questions presented (Pet. 28) relating to the jurisdictional issue raised in the Court of Appeals by the Petition for Rehearing and not decided by the general decision thereon (Pet. A-17-A-20).

The petitioner urges that the error was preserved for the record on appeal by the motion to dismiss on which the District Court ruled adversely. Further, this record shows a patent refusal by the United States Court of Appeals for the Seventh Circuit to rule on a claimed jurisdictional defect, or to grant appropriate relief in lieu thereof (Pet. A-21-A-25). The Government has neither adopted the rule of the Court of Appeals nor confessed its error, the Government simply does not comment.

2. The petitioner deems it significantly impressive to call to this Court's attention the Government's failure to urge upon your Honors the ruling of the Court of Appeals that sentences and fines in excess of that authorized by law are not "plain errors and defects affecting substantial rights (which) may be noticed although they were not brought to the attention of the court." (Rule 52(b), Federal Rules of Criminal Procedure).

Your petitioner does not believe the decision of this Court in *Berra* v. *United States*, 351 U.S. 131, was based upon a record such as is before this Court now.

While the Government recognizes the importance of the question presented (Br. Opp. 14), it would prefer it to be decided some other time. We immodestly submit that this Court will find legal and justiciable cause to act at this time.

Respectfully submitted,

FRANK J. GAGEN, JR. and
ANNA R. LAVIN,
Attorneys for Petitioner